

**COURT OF APPEAL  
STATE OF CALIFORNIA  
THIRD APPELLATE DISTRICT**

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**The Minutes**

**-September 25, 2000**

At 9:26 a.m., the court met in the Library & Courts Building for a continuation of its court calendar session. Present: Scotland, Presiding Justice; Sims, Associate Justice; Davis, Associate Justice; and Castillo, Bailiff. Calendar called.

**C030711      RALEY'S et al. v. WINTER and SAVE MART SUPERMARKETS et al.**  
Cause called. Steven P. Saxton argued for appellants. Jason E. Rios appeared for appellants but did not argue. David J. Romanski argued for respondent Winter. Curtis A. Cole argued for respondent Save Mart Supermarkets et al. Cause submitted.

At 10:23 a.m., court recessed. At 10:28 a.m., court reconvened with Acting Presiding Justice Sims, Associate Justice Nicholson, and Associate Justice Hull.

**C032008      ESTATE OF POWELL, Deceased; PARKER as Executor, etc. v. POWELL**  
Cause called. Kelly M. Walsh argued for appellant. Ron Self argued for respondent. Cause submitted.

At 10:41 a.m., court recessed. At 10:44 a.m., court reconvened with Acting Presiding Justice Davis, Associate Justice Raye, and Associate Justice Hull.

**C031484      MAVIN INCOME FUND, LTD. et al. v. CHANG et al.**  
Cause called. Jeffrey Widman argued for appellants. Samuel A. Chuck argued for respondents. Cause submitted.

At 11:17 a.m., court recessed. At 11:25 a.m., court reconvened with Acting Presiding Justice Davis, Associate Justice Nicholson, and Associate Justice Hull.

**C030543      HENDREN v. BROWN**  
Cause called. Robert W. Lucas argued for appellant. Ed W. Hendren argued for himself in pro per as respondent. Cause submitted.

At 11:53 a.m., court recessed. At 11:55 a.m., court reconvened with Presiding Justice Scotland, Associate Justice Nicholson, and Associate Justice Hull.

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**September 25, 2000 Continued**

- C031895 THE PEOPLE v. ENOS**  
Cause called. No appearance was made on behalf of appellant. Anthony Dicce, Deputy Attorney General, appeared for respondent. Cause submitted.
- At 11:56 a.m., court recessed. At 1:59 p.m., court reconvened with Presiding Justice Scotland, Associate Justice Sims, and Associate Justice Hull.
- C033760 In re the Marriage of BENSON**  
Cause called. Robert D. Martin, Jr. argued for appellant with additional citations. Michael E. Barber argued for respondent. Cause submitted.
- At 2:18 p.m., court adjourned until 9:30 a.m., October 16, 2000.
- C030622 In re the Marriage of PHIPPEN**  
Appellant's request to publish the opinion filed on August 29, 2000, is denied.
- SCOTLAND, P.J.
- C027881 THE PEOPLE v. LADNER (Not for Publication)**  
**C028559 THE PEOPLE v. HALEY**  
The judgments are affirmed.  
KOLKEY, J.  
We concur: Sims, Acting P.J.  
Morrison, J.
- C029698 JOSEPH et al. v. EAST QUINCY SERVICES DISTRICT (Not for Publication)**  
The judgment is affirmed. The Josephs shall recover costs on appeal.  
RAYE, J.  
We concur: Davis, Acting P.J.  
Kolkey, J.
- C032537 THE PEOPLE v. TURNER (Not for Publication)**  
The \$300 restitution fine imposed on April 27, 1999, is stricken. As modified, the judgment is affirmed. The \$300 restitution fine imposed on October 19, 1998, continues to be enforceable pursuant to section 1214.  
DAVIS, J.  
We concur: Scotland, P.J.  
Blease, J.

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- C032342      THE PEOPLE v. MCGHEE      (Not for Publication)**  
The defendant's conviction for petty theft is stricken. The order pursuant to section 296 is vacated. As the theft conviction did not play any material part in the defendant's sentence (the court having stayed it pursuant to section 654), there is no need to remand for the superior court to reconsider its disposition. As modified, the judgment is affirmed. The superior court shall make the appropriate amendments in the abstract of judgment and forward it to the Department of Corrections.  
   DAVIS, J.  
We concur:      Scotland, P.J.  
   Blease, J.
- C029236      FRIENDS OF DAVIS v. CITY OF DAVIS; FULCRUM DAVIS      (Certified for Partial Publication)**  
The opinion in the above entitled matter filed August 25, 2000, was not certified for publication in the Official Reports. For good cause it now appears that, pursuant to California Rules of Court, rule 976.1, the opinion should be published with the exception of parts II, IV and V. It is so ordered.  
   SCOTLAND, P.J.  
   Sims, J.  
   Callahan, J.
- C035093      In re DERRICK H.; THE PEOPLE v. DERRICK H.      (Not for Publication)**  
The judgment (order committing the minor to the California Youth Authority) is affirmed.  
   SIMS, Acting P.J.  
We concur:      Hull, J.  
   Kolkey, J.

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- C030256      THE PEOPLE v. BECERRA      (Not for Publication)**  
It is ordered that the opinion filed herein on August 31, 2000, be modified as follows:  
...  
Appellant's petition for rehearing is denied.  
There is no change in the judgment.  
SIMS, Acting P.J.  
Hull, J.  
Kolkey, J.
- C034590      In re JAMIE S. et al.; YOLO COUNTY DEPARTMENT OF SOCIAL SERVICES v. ZONNIE S. et al.      (Not for Publication)**  
  
The order of the juvenile court terminating the parental rights of appellants is reversed, and the matter is remanded to the juvenile court for further proceedings consistent with this opinion.  
HULL, J.  
We concur:    Blease, Acting P.J.  
                  Sims, J.
- C033234      THE PEOPLE v. BRIDGEFORTH      (Not for Publication)**  
The judgment is affirmed.  
SCOTLAND, P.J.  
We concur:    Sims, J.  
                  Raye, J.
- C028901      THE PEOPLE v. KOUYOTH      (Not for Publication)**  
Defendant's convictions, and the sentences imposed, for the attempted murder of Lee (count II) and for participating in criminal conduct by members of a street gang (count IX) are reversed, and the case is remanded for resentencing. In all other respects, the judgment is affirmed.  
SCOTLAND, P.J.  
We concur:    Blease, J.  
                  Hull, J.
- C030982      RAMIREZ v. STATE OF CALIFORNIA et al.      (Not for Publication)**  
The judgment is affirmed.  
BLEASE, Acting P.J.  
We concur:    Sims, J.  
                  Callahan, J.

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**September 26, 2000 Continued**

- C032250      THE PEOPLE v. BUFFINGTON      (Not for Publication)**  
The order of commitment is affirmed.  
BLEASE, J.  
We concur:    Scotland, P.J.  
                 Hull, J.
- C031037      THE PEOPLE v. PARKS      (Not for Publication)**  
The judgment is modified to reflect only one enhancement under section 667, subdivision (a), thereby reducing defendant's sentence to 55 years to life in state prison. As modified, the judgment is affirmed. The trial court is directed to prepare an amended abstract of judgment and to forward a copy of the amended abstract to the Department of Corrections.  
SCOTLAND, P.J.  
We concur:    Blease, J.  
                 Davis, J.
- C034567      FRANCIS v. FRANCIS et al.      (Not for Publication)**  
The judgment is affirmed. Plaintiff shall receive costs on appeal.  
HULL, J.  
We concur:    Blease, Acting P.J.  
                 Davis, J.
- C033602      BREWSTER v. DEPARTMENT OF JUSTICE      (Not for Publication)**  
The judgment is affirmed.  
HULL, J.  
We concur:    Sims, Acting P.J.  
                 Raye, J.
- C034637      In re JOHN E.; YOLO COUNTY DEPARTMENT OF SOCIAL SERVICES  
C034951      v. LOYAL G.      (Not for Publication)**  
The orders of the juvenile court denying appellant's petition for modification and terminating appellant's parental rights are affirmed.  
HULL, J.  
We concur:    Blease, Acting P.J.  
                 Sims, J.
- C035580      In re ELIJAH F. et al.; SUTTER COUNTY DEPARTMENT OF HUMAN  
SERVICES v. CURTIS F.      (Not for Publication)**  
The orders are affirmed.  
CALLAHAN, J.  
We concur:    Blease, Acting P.J.  
                 Davis, J.

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We concur: HULL, J.  
Scotland, P.J.  
Nicholson, J.

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**September 27, 2000 Continued**

- C031784      THE PEOPLE v. TRUJILLO      (Not for Publication)**  
The judgment is affirmed.  
                                 KOLKEY, J.  
I concur:                Morrison, J.  
I concur in the result:  
                                 Blease, Acting P.J.
- C031119      THE PEOPLE v. HALL      (Certified for Publication)**  
The judgment is modified as follows: The sentence for counts 3 and 4 (two of the three brandishing convictions) are stayed pending successful service of the balance of defendant's sentence, at which time the stay shall become permanent. (See *People v. Miller, supra*, 18 Cal.3d at pp. 886.888.) As modified, the judgment is affirmed. The trial court is directed to prepare a corrected abstract of judgment and to forward a copy thereof to the Department of Corrections.  
                                 KOLKEY, J.  
We concur:            Raye, Acting P.J.  
                                 Morrison, J.

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**September 28, 2000**

- C033190      THE PEOPLE v. CRAMER**  
On the court's own motion, rehearing is granted and the opinion filed on September 27, 2000, is vacated and the appeal is reinstated.  
BLEASE, Acting P.J.
- C033627      THE PEOPLE v. MUNDRICK      (Not for Publication)**  
The judgment is affirmed.  
RAYE, J.  
We concur:    Blease, Acting P.J.  
                 Morrison, J.
- C033330      COUNTY OF EL DORADO v. ANGLIN      (Not for Publication)**  
The judgment (order) is affirmed.  
RAYE, J.  
I concur:      Morrison, J.  
I concur in the judgment and in the conclusion that principles of res judicata precluded modification of the award of child support arrearages. Consequently, I do not reach the question whether *County of Riverside v. Burt* (2000) 78 Cal.App.4th 28 is correctly decided.  
Sims, Acting P.J.
- C032594      ANK v. FARRELL et al.      (Not for Publication)**  
The judgment is affirmed. Defendants shall recover their costs on appeal.  
CALLAHAN, J.  
We concur:    Sims, Acting P.J.  
                 Morrison, J.
- C032937      THE PEOPLE v. ESTES      (Not for Publication)**  
The judgment is reversed.  
MORRISON, J.  
I concur:      Raye, J.  
I concur in the judgment and opinion except as to part IV of the Discussion, as to which I dissent.  
Blease, Acting P.J.
- C031999      THE PEOPLE v. LANGENDERFER      (Not for Publication)**  
The judgment is affirmed.  
MORRISON, J.  
We concur:    Sims, Acting P.J.  
                 Davis, J.



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**September 28, 2000 Continued**

- C031470      L. LAURELLE DANTON v. PLEASANT VALLEY PET CLINIC et al.      (Not for Publication)**  
The judgment is affirmed. The Clinic shall recover costs on appeal.  
RAYE, J.  
We concur:    Sims, Acting P.J.  
                 Kolkey, J.
- C034266      THE PEOPLE v. DALE      (Not for Publication)**  
The trial court is directed to prepare a corrected abstract of judgment to reflect that defendant was sentenced as a two strikes defendant and to forward a certified copy to the Department of Corrections. The judgment is affirmed.  
RAYE, J.  
We concur:    Blease, Acting P.J.  
                 Morrison, J.
- C031814      THE PEOPLE v. VASION      (Not for Publication)**  
The judgment is modified to provide for a \$200 parole fine, stayed pending successful completion of parole (§ 1202.45). The trial court is directed to prepare an amended abstract of judgment accordingly as well as correcting the dates the offenses occurred and adding the fees imposed and to forward a certified copy to the Department of Corrections. As modified, the judgment is affirmed.  
MORRISON, J.  
We concur:    Blease, Acting P.J.  
                 Callahan, J.
- C032850      THE PEOPLE v. LEWIS      (Not for Publication)**  
The judgment is affirmed.  
MORRISON, J.  
We concur:    Sims, Acting P.J.  
                 Davis, J.
- C033843      THE PEOPLE v. BURGOS      (Not for Publication)**  
The judgment is modified to provide for a \$200 parole fine, stayed pending successful completion of parole (§ 1202.45). The trial court is directed to prepare an amended abstract of judgment accordingly as well as correcting the total term to 10 years and to forward a certified copy to the Department of Corrections. As modified, the judgment is affirmed.  
MORRISON, J.  
We concur:    Blease, Acting P.J.  
                 Callahan, J.

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- C031341      THE PEOPLE v. SUMAHIT      (Not for Publication)**  
The judgment extending defendant's commitment is affirmed.  
                    BLEASE, Acting P.J.  
We concur:    Morrison, J.  
                    Kolkey, J.
- C033786      THE PEOPLE v. RICHIE      (Not for Publication)**  
The judgment in case No. 98F07416 is modified to award a total of 60 days presentence conduct credits and with this modification the judgments are affirmed. The trial court is directed to prepare an amended abstract of judgment reflecting the modification and to forward a copy thereof to the Department of Corrections.  
                    BLEASE, J.  
We concur:    Raye, J.  
                    Morrison, J.
- C026576      THE PEOPLE v. MARVIN LEE SMITH aka MARVIN RAY SMITH      (Not for Publication)**  
The judgment is affirmed. The trial court is directed to correct the abstract of judgment to reflect the restitution fine under section 1202.45 (see footnote 3, *ante*) and to forward a certified copy to the Department of Corrections.  
                    KOLKEY, J.  
We concur:    Scotland, J.  
                    Hull, J.
- C031031      THE PEOPLE v. HOAG      (Certified for Publication)**  
The judgment is affirmed.  
                    HULL, J.  
For reasons stated in Justice Hull's opinion, I concur that defendant has standing to challenge the legality of the search and seizure. I respectfully dissent from the remainder of the majority's conclusions.  
...  
For all the reasons stated above, I cannot join in the majority's result on any theory proposed by either the majority or the concurring justice. I would reverse and remand the matter to the trial court with directions to grant defendant's motion to suppress the illegally seized evidence.  
                    Sims, Acting P.J.  
I concur:      Morrison, J. (See concurring opinion.)

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**C033619      THE PEOPLE v. FRONTIER INSURANCE COMPANY**

**(Certified for Publication)**

The opinion in the above entitled matter filed September 5, 2000, was not certified for publication in the advance sheets and official reports. For good cause it now appears that the opinion should be published and accordingly, it is ordered that the opinion be published in the advanced sheets and official reports.

BLEASE, Acting P.J.  
Morrison, J.  
Callahan, J.

**C035724      WALLIS v. STROHL**

On the court's own motion, the appeal is dismissed because the appellant is not a party aggrieved by the judgment. (See Code of Civ. Proc., § 902; Albers v. County of Los Angeles (1965) 62 Cal.2d 250, 273; Maxwell Hardware Co. v. Foster (1929) 207 Cal. 167, 170; Westside Center Assocs. v. Safeway Stores 23, Inc. (1996) 42 Cal.App4th 507, 519, fn. 14; 9 Witkin, Cal. Proc. (4th ed. 1997) Appeal, §188, p. 243.) Moreover, the orders denying appellant's motions to dismiss are not appealable. (6 Witkin, Cal. Proc. (4th ed. 1997) Proceedings Without Trial, § 340, p. 752.)

Appellant can assert the issues tendered in this appeal in his respondent's brief in C035172. (See Code Civ. Proc., § 906.)

The request for judicial notice is denied as moot.

SIMS, Acting P.J.



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**September 29, 2000 Continued**

- C034404**      **In re JUSTINE T.; SUTTER COUNTY DEPARTMENT OF HUMAN**  
**C034735**      **SERVICES v. ANDRIA T. (Not for Publication)**  
The appeal in case No. C034404 is dismissed (see p. 1, fn. 1, ante). The order in case No. C034735 is affirmed.  
SCOTLAND, P.J.  
We concur:    Davis, J.  
                 Hull, J.
- C033901**      **THE PEOPLE v. ARELLANO (Not for Publication)**  
The judgment is affirmed.  
MORRISON, J.  
We concur:    Nicholson, Acting P.J.  
                 Davis, J.
- C033519**      **DOVE v. EVERETT (Not for Publication)**  
The judgment is affirmed. Dove shall recover his costs on appeal.  
MORRISON, J.  
We concur:    Sims, Acting P.J.  
                 Kolkey, J.
- C033190**      **THE PEOPLE v. CRAMER (Not for Publication)**  
The judgment is modified by striking defendant's sentence under former Vehicle Code section 23175, subdivision (a), and imposing a three-year sentence under former Vehicle Code section 23175.5, subdivision (a)(1). In all other respects, the judgment is affirmed. The trial court is directed to prepare an amended abstract of judgment in accordance with this disposition and deliver a certified copy to the Department of Corrections.  
NICHOLSON, J.  
I concur:       Raye, J.  
I concur in the result:  
                 Blease, Acting P.J.